

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation, or amendment to the regulation, is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Karnal bunt, an exotic fungal disease of wheat and other grains, was detected in California in 1996. The disease was detected in Riverside County on March 25, 1996 and Section 3430, Karnal Bunt Disease Interior Quarantine, was adopted against the disease, caused by the fungus *Tilletia indica*, on April 5, 1996. The disease was also detected in Imperial County in March and the quarantine area amended to add Imperial County on April 10, 1996. As a result of negative surveys for the disease, on July 2, 2001, the quarantine area was amended to remove the Bard-Winterhaven area of Imperial County.

Karnal bunt is a disease of wheat, durum wheat, and triticale (a hybrid of wheat and rye). The disease affects both yield and grain quality. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from wheat. It does not present a risk to human health. If the disease were allowed to spread and become permanently established in California's wheat production areas, California's agricultural industry would suffer serious losses due to decreased production of wheat and other host grains and loss of markets due to quarantines enacted by other states and countries against grain and hay of California production. California's annual wheat production is valued at over \$170 million. If Karnal bunt is allowed to spread, the overall crop loss and impact on quality may be significant. The disease has already affected United States grain exports. Over 50 countries are known to regulate or prohibit grain movement on the basis of Karnal bunt.

When Section 3430 was adopted and amended in 1996, determination of the presence of Karnal bunt in an area was based on the detection of spores of *Tilletia indica* based on microscopic examination. Scientists have since determined that a positive determination as to the presence of Karnal bunt can be made only if bunted wheat, or other host, kernels are present. In 1997, the Department determined

that many of the areas in Imperial and Riverside Counties that were placed under quarantine should be removed from Section 3430, because the original determination that the areas were infested was based on the presence of spores only. All areas, except the Palo Verde Valley area of Riverside and Imperial Counties and the Bard-Winterhaven area of Imperial County, were removed from the quarantine on May 1, 1997. Subsequent annual surveys for the Karnal bunt disease were conducted and the survey results for the Bard-Winterhaven area were negative. As a result, this area was removed from the regulated area on July 2, 2001.

The Department, in conjunction with the United States Department of Agriculture (USDA), has continued to conduct annual disease surveys both within and outside the remaining regulated area. On January 5, 2004, the USDA published an interim rule (Docket No. 03-047-1) that became effective that date, and removed an area of Riverside County from the federal domestic quarantine governing interstate movement. The USDA took this action because recently completed detection and delineating surveys demonstrated that area is now free of this disease and the area should be removed from this federal domestic quarantine regulation to relieve restrictions that are no longer warranted. However, it has also been determined through cooperative state and federal surveys that Karnal bunt has also been eradicated from the Palo Verde Valley (in part) area of Imperial County. The USDA is accepting comments on their interim rule until March 5, 2004, after which, they will publish their final rule. In the final rule, the USDA also intends on removing the Palo Verde Valley (in part) area of Imperial County from the federal regulation.

As a result of the USDA's action, it is necessary to harmonize the regulated area contained in Section 3430(b)(1) pertaining to the Palo Verde Valley (in part) area of Riverside County with that area contained in the federal interim rule. This will ensure the interstate and intrastate restrictions governing movement of hosts and possible carriers of the disease from the regulated area are consistent and equivalent. Additionally, it is also necessary at this time to remove the regulated area contained in Section 3430(b)(2) pertaining to the Palo Verde Valley (in part) area of Imperial County.

On February 5, 2004, Departmental staff met with the USDA staff involved in defining the federal quarantine boundary lines for Karnal bunt disease. It was determined that as written, the federal interim rule boundary description could not be used for the purposes of describing the regulated area to be contained in Section 3430(b). For instance, in the federal interim rule, the eastern boundary is described as the Colorado River. Along this area of the Colorado River, the river changes course over time and it also crosses back and forth between the States of California and Arizona. The Department does not have any regulatory authority in the State of Arizona. Therefore it was mutually agreed that in the final rule, in order to ensure clarity and an accurate definable description for the federal rule, the USDA would adopt the boundary description being proposed for Section 3430(b) in this action.

The proposed amendment of Section 3430(b) will reduce the quarantine area in the Palo Verde Valley (in part) area of Riverside County and eliminate that portion of the Palo Verde Valley (in part) area of Imperial County from the regulation. The Palo Verde Valley area is located in the southeast portion of Riverside County and continues south into the northeast portion of Imperial County. To prevent artificial spread of the disease to non-infested areas to protect California's agricultural industry, it is necessary to continue to regulate movement of hosts and possible carriers within and from the portion of Riverside County considered to be the infested area; however, it is no longer necessary to regulate the movement of hosts and possible carriers from this area of the Palo Verde Valley.

It is necessary to amend this regulation on an emergency basis to remove the quarantine on the portion of Riverside County (a portion of the Palo Verde Valley) and Imperial County considered to be free from the disease and immediately remove restrictions on the intrastate movement of hosts and possible carriers which are unnecessary. If these unnecessary restrictions are continued and if non-infested areas remained under quarantine, it would create an unnecessary burden for the general public and businesses in that area. Host crops are being or will be harvested in or moved from these areas soon. Some commercially produced host crops, if the restrictions were continued, would have to be treated or would not be allowed movement from the area. Therefore, it is necessary to amend

Section 3430(b) as an emergency regulation change.

Authority and Reference Citations

Authority: Sections 407, 5301, 5302, and 5322, Food and Agricultural Code.

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Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

Section 3430. Karnal Bunt Disease Interior Quarantine.

This proposed amendment to the regulation will reduce the quarantine area in Riverside County and eliminate the quarantine area in Imperial County. This will reduce the total area under quarantine from approximately 720 square miles to approximately 400 square miles surrounding the Karnal bunt disease infestation in the Palo Verde Valley area. The effect of the amendment is to reduce the area of Riverside County and eliminate the area in Imperial County in which the State has authority to regulate movement of hosts and possible carriers of the disease to prevent artificial spread of the disease to non-infested areas, to protect California's agricultural industry and to enable eradication of the disease from the State. This amendment will decrease the total quarantine area for Karnal bunt disease in California from approximately 720 square miles to approximately 400 square miles.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3430 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Riverside and Imperial County Agricultural Commissioners

originally requested the changes in the regulation that placed portions of both counties under quarantine. This amendment reduces the size of the quarantine area in Riverside County and eliminates the quarantine area in Imperial County; therefore, county enforcement activities will also be reduced or eliminated.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.